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ABSTRACT

Due to increasing numbers of lawsuits, educators need protection against financial liability to persons claiming injury on school property or in school-related activities. This legal memorandum describes needed protections, discusses the National Association of Secondary School Principals' (NASSP) role in developing liability insurance, and compares statutory coverage by various states. Since 1969, all NASSP members have been entitled to broad-scale protection against damage awards; the current policy provides up to $400,000 in indemnity and civil legal defense claims. Many principals have additional coverage through state associations or school districts, but some district plans are not mandatory. Private coverage is either unavailable or extremely costly. At the present time, most states have mandatory safe-harmless statutes, but only six states offer mandatory liability insurance for educators. Highlights of Illinois, New Jersey, and Florida statutes are provided. NASSP members should find out what statutory protection against personal liability is provided in their individual states. Some statutes refer to "state employees" in general, not to educaators in particular. While a mandatory statute covering both damages and legal defense is ideal, even a permissive law offers a negotiation basis for employee benefits. (MLH)

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A Legal Memorandum

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Tort Liability

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STATUTORY PROTECTION FOR PRINCIPALS
Tort Liability

When NASSP first prepared a Legal Memorandum on tort liability nearly 10 years ago, it began:

> Second only to job security for many educators is the need for protection against financial liability to persons claiming injury on school property or in school-related activities. Recent years have witnessed greatly increased public awareness of the possibilities of such legal action. We all hear daily of the negligence claims arising from automobile accidents and malpractice claims in the medical field.
>
> While the actual number and size of awards in education-related cases has not grown substantially, the number of suits threatened and initiated has been sufficient to cause many educators to have sleepless nights.

When the Memorandum was revised in 1980, we concluded that the situation had not changed very much since the earlier Memorandum was published except that some sizable awards had been made by courts against educators who were not afforded statutory protection.

The situation has remained much the same, but the average size of court awards has increased, as have the number of suits initiated against educators. There has also been a growing public awareness of the problem this increasing litigiousness is causing, not only to educators but to all public employees, as well as the governmental entities that employ them.

Insurance Protection

The primary response to the threat of liability for legal damages was the development of insurance coverage. NASSP itself pioneered in this effort, securing its first policy in 1969. Since that time, all members have been entitled to broad-scale protection against damage awards, the current policy providing up to $400,000 in indemnity, as well as legal defense of all civil claims arising out of the member's activities in his or her professional capacity.

Many principals and other educational administrators have secured additional protection through insurance provided by state associations or their own school districts. In many districts, too, principals are afforded legal defense by school district counsel, especially when the district itself is a party defendant along with the principal and other district employees, and when all are sued in their official capacities.

Nevertheless, many principals and other educators are not offered such protection through their districts and private insurance coverage has either become unavailable or is available only at greatly increased cost. Most school districts that provide insurance protection are not required to do so. With increasing fiscal pressures upon them, it will not be surprising if they begin to withdraw such protection.

Accordingly, principals and other educators in many states have sought additional protection against financial liability arising from job-related legal claims through state legislation. Those who have not may wish to consider the desirability of doing so.

Mandatory Versus Permissive Legislation

A number of states have long had statutes authorizing school districts to indemnify their employees. Sometimes the statute specifically provides that the school district may secure insurance for this purpose. Until fairly recently, however, relatively few states required districts to provide either kind of protection.

Just 10 years ago, only 10 states had enacted such save-harmless statutes on a mandatory basis, and two of those limited the kinds of cases to which the statute would apply. In the past few years, however, largely as a result of efforts by principals and other educators, a great number of state legislatures enacted save-harmless legislation, and now two-thirds of the states have mandated protection of educators against some kinds of tort liability. A number of others still provide for such protection only at the option of the school district, while only a few offer no statutory protection to educational employees of any kind.

The accompanying chart gives a state-by-state summary of the statutory provisions currently in force relating both to save-harmless requirements and to the purchase of liability insurance by school boards for their employees. It is impossible, of course, to keep such a chart up to date very long, nor is it possible to fully reflect the details of specific statutes in a chart format. Members concerned with the details of their own statutes should review them, or seek a report on them from knowledgeable persons within their state.

Types of Statutory Protection

A few of the most comprehensive mandatory statutes cover not only financial damages that may be awarded against employees, but all other expenses that may be incurred in defending against such claims. The Illinois statute quoted below is a good example of this kind of law, including not only negligence

claims but those arising from alleged violation of civil rights as well. Note that it covers not only supervisors and teachers, but also student teachers.

Illinois Ann. Statutes, Chapter 122, Sec. 34-18.1 Protection from Suit

> The board of education shall insure or indemnify and protect the board, any member of the board or any agent, employee, teacher, student teacher, officer, or member of the supervisory staff of the school district against financial loss and expense, including reasonable legal fees and costs arising out of any claim, demand, suit, or judgment by reason of alleged negligence, alleged violation of civil rights occurring on or after September 5, 1967, or alleged wrongful act resulting in death or bodily injury to any person or accidental damage to or destruction of property, within or without the school premises, provided such board member, agent, employee, teacher, student teacher, officer, or member of the supervisory staff, at the time of the occurrence was acting under the direction of the board within the course or scope of his duties.

Indemnification statutes do not, of course, cover acts of malfeasance or willful and wanton neglect of duty. Some further limit the area of indemnity to injuries resulting from specific causes such as care of property or use of motor vehicles.

Only a few of the mandatory statutes specifically require legal defense to be provided by the school district, or for indemnification of such costs.

Others make the provision of legal defense discretionary with the board or do not mention it at all, leaving room to question whether such expenses will be covered. The state of New Jersey provides for legal defense costs even in the case of criminal actions, if the accused is not convicted.

New Jersey Ann. Statutes, Sec. 18A:16-6; Indemnity of Officers and Employees Against Civil Actions

> Whenever any civil action has been or shall be brought against any person holding any office, position, or employment under the jurisdiction of any board of education, including any student teacher, or person assigned to other professional pre-teaching field experience for any act or omission arising out of and in the course of the performance of the duties of such office, position, employment, or student teaching, or other assignment to professional field experience, the board shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; and said board may arrange for and maintain appropriate insurance to cover all such damages, losses, and expenses.

Sec. 18A: 16-6.1. Indemnity of Officers and Employees in Certain Criminal Actions

> Should any criminal action be instituted against any such person for any such act or omission and should such proceeding be dismissed or result in

a final disposition in favor of such person, the board of education shall reimburse him for the costs of defending such proceeding, including reasonable counsel fees and expenses of the original hearing or trial and all appeals.

In addition to a more typical save-harmless law, the state of Florida has enacted an interesting statute concerning the control of student conduct, a part of which limits the liability of teachers and principals for actions taken under the law.

Sec. 232.275 Florida Statutes

Liability of teacher or principal. Except in the case of excessive force or cruel and unusual punishment a teacher or other member of the instructional staff, a principal or his designated representative, or a bus driver shall not be civilly or criminally liable for any action carried out in conformity with the state board and district school board rules regarding the control, discipline, suspension, and expulsion of students.

Conclusion and Recommendations

Members in each state should find out what, if any, statutory protection against personal liability is provided in their state. In many cases, statutes do not refer to educators specifically, but only to "state employees" generally. In such cases, it is necessary to find out whether school district employees have been found by a state court or attorney general's opinion, to be "state employees." If the statute is deficient, enactment of a more complete save-harmless statute might be a good legislative goal for state or local associations. Obviously, a mandatory statute covering both damages and legal defense is best. If this is not attainable, however, even a permissive statute will provide the basis for negotiation of needed protection as an employment benefit in your district.

Each statute is different, of course, and many have been found to be subject to exceptions when challenged in court, even in states with mandatory protection. Some school districts have been very slow to meet the statute's requirements. It is important, therefore, to have the kind of insurance protection afforded all NASSP members as an element of their membership.

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SUMMARY OF STATE PROVISIONS FOR STATUTORY PROTECTION

Where both mandatory and permissive provisions are shown to exist, more than one applicable statute is in force.

State	SAVE HARMLESS		LIABILITY INSURANCE		Remarks
	Mandatory	Permissive	Mandatory	Permissive	
Ala.				x	
Alaska					
Ariz.	x				Provides immunity against punitive damages
Ark.	x		x		
Calif.	x		x		
Colo.	x			x	
Conn.	x			x	
Del.	x			x	
D.C.				x	Student drivers only
Fla.	x			x	
Ga.		x		x	
Hawaii	x				
Idaho	x			x	
Ill.	x*		x		*Specifically covers civil rights actions as well as torts
Ind.	x			x	
Iowa	x			x	
Kans.	x			x	
Ky.					
La.					
Maine	x*	x*		x	*Mandatory if government entity is found liable, permissive if government entity is found innocent.
Md.	x		x		
Mass.		x		x	
Mich.		x*		x*	*Both statutes are limited to criminal actions, but court decisions confer government immunity in some civil cases
Minn.	x*			x	*Limited to $200/600,000 per occurrence

State	SAVE HARMLESS Mandatory	SAVE HARMLESS Permissive	LIABILITY INSURANCE Mandatory	LIABILITY INSURANCE Permissive	Remarks
Miss.				x	
Mo.	x			x	
Mont.	x			x	
Nebr.		x		x	
Nev.	x			x	
N.H.	x*	x*		x	*Mandatory for civil rights violations, permissive for negligent personal injury or property damage
N.J.	x*			x	*Limited to civil actions. Legal defense of criminal charges is permitted
N. Mex.	x		x		
N.Y.	x			x	
N. Car.		x		x	
N. Dak.	x*			x	*Liability limited to $250/500,000 per occurrence
Ohio	x			x	
Okla.	x			x	
Oreg.	x			x	
Pa.	x			x	
R.I.	x				
S. Car.	x*			x	*Legal defense only
S. Dak.		x*		x	*Limited to $10,000
Tenn.				x	
Texas		x		x	
Utah	x			x	
Vt.	x		x		
Va.		x*		x	*Court decisions provide limited government immunity
Wash.		x		x*	*Mandatory for injury or property damage to employee
W. Va.				x	
Wisc.	x*			x	*Court decisions also provide general government immunity
Wyo.		x		x	